

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Serial No.: 10/756,544
Filing Date: 01/12/2004
Applicants: David H. Dicks et al.
Title: FITMENT FOR FLEXIBLE CONTAINER
Art Unit: 3754
Examiner: Phillipe Derekshani

**PETITION TO REQUEST WITHDRAWAL OF HOLDING OF ABANDONMENT
UNDER 37 CFR 1.181**

Attn: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 1.181, Applicant hereby petitions the Commissioner to request withdrawal of holding of abandonment of Application No. 10/756,544, which was declared by the Office to be abandoned based on Applicant's failure to timely file a Reply to the Office Letter of July 20, 2006, which was incorrectly listed in the Notice as August 17, 2006 (Applicant's reply date). Applicant contends that the above-noted Reply was in fact filed with the US Patent and Trademark Office on August 17, 2006, by EFS Web within the statutory period allowed for such a reply.

In support of the Petition herein, Applicant submits copies of the Amendment and Request for Reconsideration originally filed by Applicant on August 17, 2006 and the Status Letter Mailed to Applicant received from the US Patent and Trademark Office by Applicant the same day and which appears in the USPTO's electronic file

wrapper in EFS Web. As evidenced by the Status Letter, the Office has received 3 pages including the cover page from Mesmer & Deleault, PLLC regarding Application No. 10/756,544. As evidenced by the Provisional Election response attached hereto and found in the file wrapper of the EFS Web, the response to restriction requirement of July 20, 2006, which was prepared by Applicant's attorney, contains 3 pages including the cover page as well. Furthermore, as seen from the Status Letter Mailed to Applicant, the Office received the above-noted communication through the EFS Web from Applicant on August 17, 2006 at 10:25:24 AM (Eastern Daylight Time), which is less than one month from the mail date of the Office Letter. Accordingly, Applicant has timely filed a proper Reply to the Office Letter mailed on July 20, 2006.

Granting of this petition would not and does not prejudice the public's interest in the subject matter of the present application or public policy.

In view of the above, Applicant respectfully requests that this petition be granted and that the petition fee be refunded.

A petition fee in the amount of \$400.00 is enclosed in connection with this Petition.

Respectfully submitted,



Robert R. Deleault, Reg. No. 39,165
Attorney for Applicants
Mesmer & Deleault, PLLC
41 Brook Street
Manchester, NH 03104
Tel. (603) 668-1971

Dated: March 26, 2007

Certificate of Transmission

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office by way of EFS Web on March 26, 2007.

Robert R. Decker
Robert R. Decker

Electronic Acknowledgement Receipt

EFS ID:	1158457
Application Number:	10756544
Confirmation Number:	3848
Title of Invention:	Fitment for flexible container
First Named Inventor:	David H. Dicks
Customer Number:	23580
Filer:	Robert R. Deleault
Filer Authorized By:	
Attorney Docket Number:	nova0104fitmt
Receipt Date:	17-AUG-2006
Filing Date:	12-JAN-2004
Time Stamp:	10:25:24
Application Type:	Utility
International Application Number:	

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)	Multi Part	Pages
1	Response to Pre-Exam Sequence Notice	responsetorestriction.pdf	63858	no	3

Warnings:	
Information:	
Total Files Size (in bytes):	63858
<p>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</p> <p><u>New Applications Under 35 U.S.C. 111</u> If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><u>National Stage of an International Application under 35 U.S.C. 371</u> If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p>	

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U.S. Serial No.: 10/756,544
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Applicant: David H. Dicks et al.
Title: FITMENT FOR FLEXIBLE CONTAINER
Assignee: Nova Biomedical Corporation
Attorney Dkt No.: nova0104fitmt
Art Unit: 3754
Examiner: Philippe S. Derakshani

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed for filing in the above-referenced patent application please find a
PROVISIONAL ELECTION PURSUANT TO 37 C.F.R. § 1.143.

Respectfully submitted,

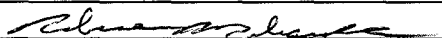


Dated: 8/17/06

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Robert R. Deleault


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Examiner: Philippe S. Derakshani


PROVISIONAL ELECTION PURSUANT TO 37 C.F.R. §1.143

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement mailed July 20, 2006, Applicants provisionally elect without traverse the Species I invention identified by the Office as the species illustrated in Figures 1-2a, which is covered by Claims 1-10, 22-33, and 37-38, but reserve the right to include all of the claims of Species I and II should a generic claim be allowed, pursuant to 37 C.F.R. §1.143, and without affecting Applicants' ability to later file divisional applications based on the non-elected claims of Species II.

Respectfully submitted,



Date: 8/17/06

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Robert R. DeBeault
[Signature]